

Constitutional Law MBE Flashcards

Article III Section 1: Provides the Case and Controversy requirement which creates the Justiciability doctrine.

The requirements for a case and controversy for standing: (1) Standing; (2) Ripeness; (3) Mootness; (4) Not a political question.

The Standing Doctrine is whether the plaintiff is a proper plaintiff to bring the case before the court.

For standing a plaintiff must allege a personally suffered injury or an imminent injury for an injunction or declaratory relief.

Exam Tip: For questions asking which party has standing: Look for the party who actually suffered an injury. If multiple parties suffered an injury; look for the party who suffered a monetary injury.

The general rule is that there is no third party standing except when: (1) there are certain close relationships (such as doctor patient); (2) Injured party is unlikely able to assert their own rights (Defendant can raise rights of potential jurors); (3) An organization may sue on behalf of its members.

An organization may sue for its members when: (1) The members would have standing to sue in their own right; (2) the interests are germane to the organization's purpose; and (3) neither the claim nor the relief requires participation by the individual members.

There is no generalized grievances due to lack of sufficient standing. thus a plaintiff may not sue solely as a citizen or as a taxpayer to force the government to follow the law.

However, Taxpayers do have standing to challenge governmental expenditures as violating the Establishment clause. Note that this exception is very narrow, and it is limited to taxing and spending power (money) and not donations of land to religious organizations.

There are three exceptions to the mootness rule: (1) Where the wrong is capable of repetition yet evading review; (2) voluntary cessation; (3) Class action suits where one class member still has issue dispute other members' mootness.

The political question doctrine includes: (1) Republican form of government clause challenges; (2) Challenges to the President's conduct of foreign policy; (3) Challenges to the impeachment and removal process; (4) And challenges to partisan gerrymandering.

All cases from state courts and United States courts of appeal come to the Supreme Court pursuant to a writ of Certiorari.

The Supreme Court has original and exclusive jurisdiction over suits between state governments.

Supreme Court review of three judge federal district court panels are immediately appealable.

The final judgement rule prevents interlocutory review.

For the Supreme Court to review a state court decision there cannot be adequate and independent state law grounds for the decision.

The 11th Amendment bars suits against states by private parties in federal courts.

the principle of sovereign immunity states that the states cannot be named as a defendant in federal or state courts for monetary damages by private citizens.

The exceptions to sovereign immunity include: (1) Consent the waiver must be explicit; (2) Pursuant to federal laws adopted under section 5 of the Fourteenth Amendment; (3) and federal government may sue state governments--think of the Arizona Immigration law.

Suits against state officers are allowed in the following circumstances: (1) For injunctive relief; (2) For money damages paid personally (but not if the state treasury would be paying retroactive damages).

The abstention doctrine is where the federal courts may not enjoin the state court proceedings.

The commerce power allows Congress to act through: (1) the channels of interstate commerce; (2) Instrumentalities of interstate commerce; (3) to regulate economic activities that have a substantial impact on interstate commerce.

A substantial effect on interstate commerce for non economic activities is where the effect cannot be based on cumulative impact.

The Tenth Amendment places a limit on congressional powers. Which is to say that Congress cannot compel state regulatory or legislative action.

Legislative action requires both the House of Representatives and the Senate to vote on a bill and then present it to the president for passage or veto.

Both legislative vetos and line-item vetos are constitutionally prohibited.

There are no limits on the congressional ability to delegate legislative powers to the other branches of the government.

However, the Legislature cannot delegate to itself powers from the other branches of the federal government.

Treaties must be negotiated by the president and become effective only when ratified by the senate. When the treaty is inconsistent with existing state law, then the treaty prevails. Similarly, if a treat and a federal law are inconsistent the last in time controls.

However, a treaty can never be inconsistent with the Constitution, and thus the Constitution remains the ultimate law of the land pursuant to Article VI thereunder.

An Executive agreement is effective when it is signed by the president and the head of a foreign nation. note that no Senate approval is necessary.

The president has the power to appoint the following three federal officers: (1) Ambassadors; (2) Federal Judges; (3) Officers of the United States.

Note that Congress may not give itself or its officers the appointment power.

The president's removal power over any executive branch office is considered absolute unless it is limited by statute, in which case he may only remove for cause, and this is usually limited to lower level executive officials, or executive officials whose terms are set out.

For Congress to limit the President's removal power: (1) It must involve an office where Independence from the president is desirable; and (2) It cannot prohibit removal, Congress is only authorized to limit removal for good cause.

The President's immunity from suit is absolute immunity to civil suits for monetary damages for actions while he is in office. Note however, that there is no immunity for actions that occurred prior to taking office.. Nor is there criminal immunity, even the president is not above the law.

The executive privilege covers papers and conversations but must yield to other important government interests.

Implied preemption occurs where the federal law preempts state law. And this occurs in 3 situations: (1) Federal and state laws are mutually exclusive; (2) State law impedes achievement of a federal objective; (3) Congress evidences a clear intent to preempt state law.

The ability of states to tax and regulate federal governmental activity is nonexistent. That is because public policy prohibits it.

A state law which burdens interstate commerce will violate the dormant commerce clause if it merely burdens interstate commerce, which means that the burden exceeds the benefits.

To analyze a state law that discriminates against out-of-staters you must ask the following: (1) Does it burden interstate commerce? ; (2) If it does--is it necessary to achieve an important governmental purpose?; (3) If yes--it is valid; (4) If no-- it violates the dormant commerce clause.

The Market Place exception states that a state or local government may prefer its own citizens in receiving benefits from governmental programs or in dealing with government-owned businesses.

There are two exceptions to a law that discriminates against out-of-staters which is not necessary to achieve an important governmental purpose: (1) Congressional Approval; and (2) Market Participant exception.

Laws which discriminate against out-of-staters ability to earn their livelihood violate the Privileges and Immunities clause

unless it is necessary to achieve an important governmental objective.

The Privileges and Immunities Clause does not apply to: (1) Corporations; and (2) Aliens.

The Full faith and credit Clause requires the Courts in one state to accept the judgements of courts from another state so long as: (1) The court rendering judgement has subject matter and personal jurisdiction; (2) The Judgment was on its merits; (3) and the Judgement was final.

A state tax system may not be used to help in-state businesses at the expense of out-of-state businesses.

States may only tax activities which have a substantial nexus to the state.

State taxation of interstate business must be fairly apportioned.

Prohibitions on private race discrimination is valid under the Fourteenth Amendment.

Situations where private conduct must comply with the constitution are two fold: (1) Public function exception (that is doing something traditionally and solely performed by the government such as an election); (2) Entanglement exception.

The entanglement exception is where the government affirmatively authorizes, encourages, or facilitates an unconstitutional activity.

If the government leases premises to a restaurant which racially discriminates will constitute a state action allowing the Constitution to apply.

If the state provides books to schools which racially discriminate it is considered a state action which is actionable under the Constitution.

However, where a school that is over 99% funded by the government fires a teacher because of her speech it is not a state action.

Additionally, it is not a state action when the NCAA orders the suspension of a basketball coach at a state university.

On the other hand, when a private entity regulates interscholastic sports within a state it is a state action. but it is not a state action when a private club with a liquor license from the state racially discriminates.

With the Bill of Rights, they apply directly to the Federal government, and they apply to the state governments via incorporation pursuant to the 14th Amendment.

Amendments which are not incorporated by the Fourteenth Amendment include: (1) The third amendment quartering of soldiers; (2) Fifth Amendment grand jury for criminal cases; (3) Seventh Amendment jury in civil trials; (4) and Eighth Amendment excessive Bail.

There are three levels of scrutiny: (1) Strict Scrutiny; (2) Intermediate Scrutiny; (3) Rational Basis.

For the Rational basis test the government purpose must be: (1) Rationally related; and (2) must have a legitimate conceivable purpose, which means that it cannot be arbitrary or capricious. Note also that the challenger carries the burden off proof under this test, and it is nearly impossible to win on this ground.

For Strict Scrutiny the government has the burden of proving: (1) That the Restriction is necessary to achieve (2) a compelling actual purpose; and (3) that there are no less restrictive options available.

For Intermediate Scrutiny the government must prove: that the restriction is substantially related to an important actual purpose, but it need not be the least restrictive means available.

A Deprivation of liberty pursuant to the Fifth Amendment occurs where there is an entitlement and it is unfulfilled. (note, examiners no longer use the terms rights or privileges, the proper terminology is entitlement!)

In emergency situations the government is liable under the Due Process Clause only if its conduct shocks the conscience (very tough standard to meet).

The standard of conduct which is required for liability to exist is that the governmental action must be: (1) intentional; or (2) Reckless. Thus negligence will not suffice for a Due Process

claim for deprivation of life.

The Three factors that must be applied in the balancing test for Due Process are: (1) the importance of the individual's interest; (2) the government's interest; (3) The ability of additional procedures to increase the fact-finding. Note also that the cost to the government should also be considered.

The Constitution only provides minimal protections for economic liberties. Therefore in such cases you only apply the rational basis test for laws that affect economic rights.

The Takings clause states that the government may take private property for public use if it provides "just compensation".

In analyzing a takings issue apply a three part test: (1) Is there a taking?; (2) Is it for the public use?; (3) Is just compensation paid?

Note that there are two kinds of takings: (1) Possessory, which is government intrusion or possession no matter how small (government cable running through your living room would amount to a taking); (2) Regulatory, which is where the government regulates the land so that there is no reasonable economically viable use left.

Also note that just compensation is measured by the loss to the owner, and not to the gain to the government. Thus look for the Fair market Value of the Property taken.

The Contracts clause of the Constitution is only applicable to state or local interference with existing contracts, and not future contracts. It also does not apply to Federal interference with private contracts.

Where a state or local government interferes with a private contract: (1) Does the legislation substantially impair the party's rights under an existing contract?; (2) if so, is the law a reasonably and narrowly tailored means of promoting an important and legitimate public interest?

The level of scrutiny applicable when a government contract is interfered with by state or local authorities is strict scrutiny. On the other hand, if it is a private contract it need only meet intermediate scrutiny.

For Ex Post Facto laws to exist there are three methods to make

it such: (1) Making a law criminal after the action was done, and it was legal at the time it was done; (2) Changing the amount of evidence required to prove the offense; (3) Increasing the punishment after the fact.

Ex post facto laws in civil cases need only meet the rational basis test. (note bar bri states that there is no ex post facto in civil issues, but there can be; it's just rare).

For privacy rights which are analyzed under Substantive Due Process the standard of review is generally strict scrutiny.

There are fundamental rights of privacy found in: (1) The right to marry; (2) The right to procreate (i.e., sterilization laws); (3) Right to custody of one's children (note that court cannot order grandparent visitation if the parent objects); (4) Right to keep one's family together (including relatives not of the nuclear family); (5) Right to control the upbringing of one's children; (6) Right to purchase and use contraceptives.

Note that per Casey v. Planned Parenthood, Strict Scrutiny is no longer applied to the right of privacy for a woman to get an abortion. Now the test is the Undue Burden Test.

Thus prior to viability: (1) the state may not prohibit abortion; (2) The state may regulate abortion so long as it is not an undue burden. (note that 24 hour waiting period, license physician requirement; and minor to notify parents, as long as alternative to go before judge to decide in best interest of immoral minor to get abortion, or that she is mature enough to make an immature decision then it's A OKAY!).

After viability the state may prohibit abortion unless it is necessary to protect the woman's life or health. Also note that spousal consent laws are unconstitutional. And the government cannot partial birth abortion as that's an undue burden.

Note that privacy rights which are not afforded strict scrutiny include: (1) the right to engage in homo activity; and (2) Right to refuse medical treatment. Also note that there is no right to physician assisted suicide...Ask Kevorkian.

When analyzing Equal protection there are three questions that one needs to ask one's self: (1) What is the class involved (i.e., suspect classification, or quasi-suspect?); (2) What level of scrutiny should be applied?; (3) Does this law meet the level of scrutiny to be applied?

For classifications based on Race and Alienage, also known as suspect classification: Apply the Strict Scrutiny test. (note for aliens, this does not apply to restrictions on immigration as Congress has plenary power over aliens; it also doesn't apply in cases of self governance: thus aliens cannot be teachers, police officers, vote, or be serve on juries, or serve as probation officers. That being said, they can still be attorneys...cause that makes sense..right?)--Also illegal aliens are not a suspect classification, but the babies they pop out here or raft here over the Rio Grande deserve free edumacation! Thus they get intermediate scrutiny.

Classifications which benefit minorities will receive strict scrutiny.

Classifications based on Bastards and Gender receive intermediate scrutiny.

The existence of a classification is proven if : (1) It exists on the face of the law; (2) If the law is facially neutral then: (a) discriminatory intent AND; (b) discriminatory impact. If either of those elements is missing then apply rational basis.

Note that the standard of review for alienage is typically strict scrutiny. However, it will be rational basis for classifications that concern self-government and the democratic process as mentioned earlier.

Rational Basis will be used for: (1) Age; (2) disability; (3) Wealth; (4) Economic Regulations; (5) Sexual orientation discrimination.

The standard of review for fundamental rights is strict scrutiny.

The Fundamental rights protected under Equal Protection include: (1) The right to interstate travel (but not international travel); and (2) Right to vote.

There are two types of content-based restrictions regarding The First Amendment Freedom of Speech: (1) Subject matter restriction (i.e., no picketing unless you're in a labor union and love Obongo); and (2) Viewpoint restriction (burning flag

okay, but draft card not protected..sorry Kerry.)

The standard of review applied to content based restrictions is the strict scrutiny test.

the standard of review for content neutral laws burdening speech are generally reviewed under intermediate scrutiny.

There are two types of speech which are either less protected or are unprotected: (1) Incitement of illegal activity is less protected; (2) Obscene material and sexually-oriented speech (not so much).

the incitement of illegal activity test is two fold: (1) Is there a substantial likelihood of imminent illegal activity; and (2) Is the speech directed to causing imminent illegal activity?

Commercial speech for illegal activity or false and deceptive advertisements is not protected by the 1st Amendment.

The government can regulate commercial speech but: (1) it must be narrowly tailored; (2) however it need not be the least restrictive alternative.

With respect to privacy, there is no liability for: (1) truthful reporting of lawfully obtained material; (2) matters of public importance.

Speech for government employees on the job or in the performance of their duties is not protected.

Regulations on public forums include: (1) limited to time, place, and manner restrictions; (2) that serve an important governmental purpose; (3) and leaves open adequate alternatives for communication; (4) Need not be the least restrictive alternative.

Regulations on limited public forums are the same as for public forums when made open to the public (like public schools on the weekends).

Regulations for non-public forums is that the government can regulate so long as the regulation is reasonable and viewpoint neutral (this includes--airports; sidewalks at post office; areas outside of prisons or jails, ad space on city buses; military bases; and political debates on government owned stations).

The standard of review applicable for laws that prohibit or punish freedom of association is strict scrutiny.

To punish membership in a group the government must prove: (1) that the members actively affiliated with the group; (2) Knowing of its illegal activities; (3) with the specific intent of furthering those illegal activities.

The standard of review applicable to laws that require disclosure of group membership if it chills association is strict scrutiny.

laws that prohibit a group from discriminating are constitutional unless they: (1) interfere with intimate associations; or (2) involve expressive activity.

The free exercise clause cannot be used to challenge a neutral law of general applicability. (don't ban dope man I use it for religious purposes. Court said, tough shit--dope laws apply to all, not just to religions, so no free exercise clause).

The Establishment Clause test : (1) Primary secular purpose; (2) Effect neither advances nor inhibits religion; (3) and no excessive purpose.

the standard of review for discrimination against religious speech is strict scrutiny.